

Theories of Irregular Warfare: A Literature Review
Farnaz Ganjeloo
Islamic Azad University of Iran - South Tehran Branch
Summer 2024

In the early days of the 2022 Russian invasion of Ukraine, many Western reporters and journalists seemed shocked that war had happened in a "civilized, European" country. One particularly telling reaction was the CBS News correspondent who said: "This isn't a place, with all due respect,

like Iraq or Afghanistan that has seen conflict raging for decades. This is a relatively civilized, relatively European ... city where you wouldn't expect that, or hope that it's going to happen". Another journalist working for France's BFM TV lamented the scene of Ukrainians fleeing their homes by saying: "... we're talking about Europeans leaving in cars that look like ours to save their lives". For a British journalist the shock was that: "War is no longer something visited upon impoverished and remote populations".ⁱ

What relationship exists between war and civilization? And why these Western journalists were so bewildered by the realization that bombardment of cities and long lines of civilians fleeing from the killing and destruction of war can be seen in a "relatively civilized" part of the world? For many, war and its atrocities are inherently antithetical to civilized manners embodied in law and order. Although such revulsion is not new, as is reflected in the Roman saying: "*Inter Arma Silent Leges*", in the modern age, it has mainly been a product of the Enlightenment era and its ideals of the rational man. War and the resort to violence were regarded as the opposite of such an ideal, while the law promised peaceful and rational regulation of the affairs of humankind.

Western intellectuals of the 18th and 19th centuries, inculcated with the promises of Enlightenment, maintained their faith that the progress of human civilization would ensure that order and law prevail upon the irrationality and barbarity of chaos and war. Many laws and customs of war originated from pre-Enlightenment moral and religious traditions or the practices of ancient, medieval, or early modern polities. Nevertheless, their codification into written laws of armed conflict from the second half of the 19th century onwards was in part a response to an urge that even something as violent and chaotic as war can be regulated and made more "civilized" by the rational man.

Regardless of the authenticity of the dubious claims that war is bereft of any rational or normative aspect, the question is, one can ask how notions of order, rationality, regulatedness and civilization came to be applied into the business of warfare?

The laws of armed conflict, developed out of the practices of states as well as humanitarian concerns, are designed in such a way as to regulate, in many cases based on practical considerations, the excessive violence and acts of cruelty that are usually concomitant with wars. But war is too broad a term to describe various types of armed violence worldwide. Terms such

as small, irregular, or low-intensity warfare attest to the differences, real or imagined, that exist among methods and practices of war in various situations. Some of the primary forms of such warfare like insurgencies and counterinsurgencies, rebellions, or guerrilla wars, are not modern phenomena as their origins revert to ancient times. Yet, from at least the late 18th century, rebellion against established authority has been associated with revolutions, popular demands for political change, and resistance against empires. The question is whether violence in these types of conflicts differs from others.

Irregular wars can become protracted, attritional, vexing, and controversial. Violence under such circumstances is not unnatural for conventional armies who hate non-conventional adversaries because of the vast differences in military doctrine, training, ethos, methods, and tactics. Moral revulsion might also affect the ferocity and intensity of the fight against rebels and those who forcefully challenge the established authority. In the age of democratic governance, where the consent of the ruled is the basis of political legitimacy, however, persuasion and clemency should replace violent means to deal with popular grievances. Modern counterinsurgency operations (COIN) accept, at least rhetorically, that paradigm of the war among the people makes the political, social, and cultural tools in the fight against insurgency as crucial as the military ones. A war in which victory cannot be achieved only by military means and the purpose is to "win the hearts and minds of the people" requires more sophisticated methods to justify systematic violence inevitable in the suppression of military challenges against rightful authority.

Internal insurgencies are not the only form of COIN. States may also engage in wars with irregular, or even regular, insurgents in places outside their territories to help their allies for national interest or ideological considerations or reasons related to the making and securing of empires. Historically, the encounters between the European powers and the people in the colonies have been understood as a form of irregular warfare. This colonial and imperialist connection and its association with cultural agendas in the shape of disseminating Western values - Christian or modern - contributed significantly to the development of a character for irregular war as a conflict with inferior, savage, and uncivilized opponents in the exotic and unfamiliar peripheries of the international system.

In irregular warfare, atrocities can happen both against enemy combatants and civilians. COIN strategies claim to be population-centric

because controlling people is the primary purpose of these wars. War is naturally violent, and public opinion can be relied upon to understand or even support violence against an enemy considered an existential threat. Still, given the strong connection between COIN and humanitarian projects - whether civilizing missions of the past or humanitarian interventions of the more contemporary times - states need to justify the excessive violence and atrocities that happen within the context of suppressing armed resistance and insurgencies.

COIN tactics and strategies encompass immense human costs since they usually involve the employment of lethal force in both rural and urban civilian settings. As a kind of war among the people, COIN is characterized by indiscriminate or reprisal attacks against civilian targets, torture, indefinite internment, curfews, forced relocation of population, etc. To justify violence in these situations, states resort to the securitization of the threat posed by insurgents, who are, in many cases, irregulars. This is usually carried out based on a simplified image of the enemy in COIN that is thought to help justify the atrocious conduct of the war but adversely affects the operations in important ways.

The image of the irregular enemy thus constructed for the war rhetoric is based on modern moral arguments. Rebellion against authority and order was never acceptable in pre-modern cultures, but in the modern age, it has also been imbued with an essentially moral distinction between the regular and the irregular form of warfare. In his *Theory of the Partisan*, Carl Schmitt identified the distinction between the regular and the irregular as one of the basic organizing principles of modern war. The image of the irregular fighter constructed in such a way as to create an opposing identity for the regular combatants serving the armies of the states was inevitably tied to the notion of acting beyond the boundaries of legality, honor, and right.ⁱⁱ

Sibylle Scheipers takes the notion of the regular as a regulative ideal that makes everything else "deviant and morally inferior". This ideal defines a realm of reason as opposed to an anarchical, threatening "irregularity" that is unheroic, unnoble, and dishonest. The irregular fighter becomes someone who, unlike a soldier, fights for his or her own benefit, not for the public good. The irregular fighter's resort to armed violence obfuscates the long-established and venerated legal categories of combatant and civilian and complicates the legal order and simplicity of society and the battlefield.

However, an important consequence of this distinction, in the words of Scheiper, is that:

“The concept of irregular is an ideational weapon of war... charging an opponent with being an irregular fighter has important ramifications in the battle of ideas and definitions. It is a means of denouncing someone for fighting an allegedly unfair fight, for fighting for the wrong motives, and/or for having no right to take up arms”.ⁱⁱⁱ

The label of irregular, like that of an insurgent itself, will have political, legal, strategic, operational, and tactical repercussions in modern war. Thus, it is crucial to understand what purposes are served by calling internal or external enemies with such labels and how they might help both the war rhetoric and the conduct of armed conflict in ways that are not justifiable under more normal conditions as far as normalcy can be reconciled with something like war.

This study tries to understand why states deviate from both international and domestic laws and customs of war within the context of their external COINs. The emphasis is on “states”. It is a form of political organization with a history that starts with the formation of territorial polities in late middle ages and early modern Western Europe. It, then, developed to secular (17th and 18th centuries) and democratic (19th and 20th centuries) political units of the contemporary international system. When several states begin to interact with each other, a community of states forms that is usually referred to, in the IR literature, as international system. Communities develop senses of identity and common culture. They establish orders; arrangements or dispositions of members in relations with each other according to mutually agreed principles, methods and mechanisms that reflect underlying identities and cultures. The question this study asks, then, is how the order and culture created by the international system of states affects our understanding of regular and irregular warfare; and how this understanding, in turn, shapes the rules of the conduct of war in the latter?

The problem of insurgency in both military studies and the law is not much about material factors as it is about ideational ones. COIN is a war between two opposing sets of identities, ideas, values, and approaches. Nowhere it is more vivid than in the fight against irregular insurgents. In such conflicts, one side identifies itself as a force at the service of order,

law, and civilization while regarding the other side as an uncivilized and undisciplined agent of barbarity, chaos, and decadence.

Two related problems make things more complicated. On the one hand, COIN's purpose is not just to defeat the enemy but to obtain people's peaceful loyalty to authority. This will be achieved by implementing strategies to enforce law and order. It will make COIN an essentially policing operation; however, it cannot be carried out by regular, civilian law enforcement agencies, but by the army. On the other hand, the states themselves are unwilling to accept insurgency as a legitimate form of war; in their eyes, it is a criminal activity that should be dealt with law enforcement approaches. The result is a blurring of lines between policing and military functions where a military organization is required to carry out a civilian law enforcement duty incompatible with its normal doctrines, training, ethos, and methods, and in conflict with an enemy it is not accustomed to facing. The confusion of functions and competencies will render the normal laws and even the principle of the rule of law itself highly ineffective in tackling the crisis at hand.

The ambiguity in the status of irregular fighters, which gives rise to the category of unlawful combatant in contemporary legal parlance, reflects the biases emanating from the modern concept of sovereignty. It strictly defines which categories of people have a right and privilege to take up arms; all those that do not fall within these pre-defined categories become automatically unlawful combatants excluded from the protections in domestic and international laws of war. The distinction between international and non-international armed conflicts in the laws of war indicates the differences that exist, even today, in the rules and principles governing various types of wars. The massive bulk of rights and protections accorded to both combatants and civilians in the conventions of the laws of war were first formulated with the sole purpose of applying them in the wars among states. Although the Second Additional Protocol to the Fourth Geneva Convention (1977) and a myriad of advisory opinions by the International Committee of the Red Cross (ICRC) have attempted in recent decades to extend those rights and protections to other types of wars (civil wars, revolutionary wars, insurgencies, ...), many leading members of the international state system are still reluctant to treat non-international armed conflicts or more contemporary forms of military operations (for example, against terrorist organizations) as wars that are wholly regulated by international law.

After suffering notoriety in the 1960s and 1970s, COIN gained renewed attention beginning from the Global War on Terrorism as it was thought to be the only effective strategy in containing the threat of armed Islamic fundamentalism. While the abuses in Afghanistan and Iraq were not more horrible than earlier cases of COIN, geographical and cultural distance, in addition to political indifference, curtails the ability of civil society to resist the government's manipulation tactics in controlling the narrative of the wars and their human and financial costs. The contemporary COIN has failed in its neoliberal nation-building projects on the one hand, while the boomerang effects of its harsh and brutal tactics have created a permanent state of emergency manifested in torture, targeted killing, night raids, drone strikes, indefinite internment, and the suspension of legality, both at home and on foreign battlefields all in the name of security.

In the past two centuries, horrendous atrocities have happened within the context of small and irregular wars, including a wide range of colonial and guerrilla wars or external counter-insurgencies.^{iv} In light of these concerns, this study aims to understand the ideational tools states employ to justify their brutal tactics in such armed conflicts.

Theories of War Atrocities

Violence is a perennial feature of wars, both pre-modern and modern. It is hardly surprising given its very nature as the employment of brute force against an opponent. The history of the world is replete with incredible stories of heartless cruelties against enemies. Still, aversion toward unprovoked and pointless atrocities, even at the height of the war, has also been a persistent theme in every great moral system across geographical and cultural boundaries.

This moral detestation has been reflected in modern laws of war that aim to constrain unnecessary violence during armed conflict situations. The current literature on the question revolves around a number of general theories. Michael J. Englehardt and R. J. Rummel use a political regime-type framework to highlight the differences between democracies and non-democracies in this regard.^v The former type of regimes' willingness to respect domestic laws and the rights of their citizens makes it easier for them to adopt the same position toward international laws and norms. Englehardt, particularly, argues that a democratic form of government can

have an inhibiting influence on the level of violence in COIN. However, empirical studies can easily demonstrate that democracies are as prone to unnecessary violence as non-democracies, especially for their vulnerability to public opinion pressures.^{vi} Such considerations drive many democracies at war to adopt brutal tactics toward breaking their opponents' will and end the war as quickly as possible. Apart from the colonial records of some of the leading Western democracies, their external COINs in more contemporary times have also been characterized by brutality against both enemy combatants and civilians.

Another set of theories focuses on military organizations and the cultures that they develop. This organizational culture refers to a pattern of presumptions, ideas, and values that prescribe how an organization should govern its internal issues and adapt itself to the outside environment. Those patterns determine whether an army resorts to war atrocities or stigmatizes such behaviors. Other works related to the same organizational theory explore the possibility that the rivalries among various branches of the same military organization can affect the level of violence in cases where the competitors believe it might help them advance their sectional agendas.^{vii}

Other theories emphasize the role of ideology in the occurrence of excessive violence, especially within the context of civil and revolutionary war or where the belligerents are inspired by opposing political values.^{viii} War atrocities have also been investigated in connection with some super-trends in global history. Excessive violence and bloodshed against enemy populations may be motivated by objective reasons. Ben Kiernan argues that agricultural civilizations' need to expand the acreage of the arable lands within their possession leads to territorial conquests and displacement or annihilation of local populations when their lifestyles and means of subsistence do not conform to the requirements of an agrarian economy.^{ix} The Romans were ruthless in suppressing the people of Numantia in modern Spain because the markedly different lifestyle of its inhabitants was thought to impede the Romans' permanent residence in the Iberian Peninsula. The Chinese civilization, which was not as warlike as Rome, did some of its most savage war atrocities in fights to control nomads of Northern Asian steppes.^x

Empire-building and resistance toward it would inevitably lead to brutality as it did during the Roman conquest of Carthage, the Norman invasion of England in the 11th century, the Mongols' subjugation of Asia

and Eastern Europe in the 13th century, the English occupation of Ireland in the 16th and 17th centuries and the Spanish colonization of the New World around the same time.^{xi} The imperial elite is constantly preoccupied with the question of security, especially on the frontiers. Suspicions about the loyalty of frontier populations or their collusion with external enemies lead to mass killing and deportation; under such circumstances, war can become unrestrained, even to the point of extermination.^{xii} In the 19th century, the United States committed unspeakable atrocities against the native tribes, while the Soviet Union gained notoriety in the 20th century for its treatment of the nationalities residing on the fringes of the empire. Frontier violence can also arise from the empire's need to maintain desirable demographic composition on the borders. Imperial Germany adopted policies to keep the Polish population's expansion on its eastern borders under control. In the 20th century, the Sri Lankan government pursued similar measures to check the growth of the Tamil population in rural areas.^{xiii} Likewise, the disintegration of empires and the struggle among the surviving components to consolidate territorial boundaries of their newly-formed culturally and racially homogeneous states can end in bloody wars, as happened in 20th century Eastern Europe.^{xiv}

The connection between violence and the rise of modernism and the sovereign state has also interested notable figures such as Hannah Arendt, Aime Cesaire, and William E. B. Du Bois. Modern instruments, technologies, and bureaucracies have facilitated the most severe forms of atrocities in recent centuries. Emphasizing the difference between society-led and state-led mass murder in terms of scale, speed, and severity, Zygmunt Bauman argued that the great genocides of the 20th century would hardly be imaginable without the technological, organizational, and administrative capabilities of modern states.^{xv} Other writers have explored the violent potentials of modern economics (the primacy of self-interest, global markets, private property, the industrial revolution, Fordist mass production, accumulation of capital, wage labor, and monetized exchange), modern politics (Westphalian order, fixed borders, and citizenship, the concept of sovereignty), modern social orders (the increasing significance of racial, class, gender, and ethnical categories and the organization of the division of labor) and modern culture (the ideologies of rationality, progress, individualism, science and Enlightenment itself).^{xvi}

The technological advances associated with modernism give rise to an interesting body of scholarly works that explore the question of the unusually high level of violence in modern warfare through the concept of

total war. Total war refers to a special kind of military conflict in the late 19th and early to mid 20th centuries characterized by the intensity and the geographical scope of the war, the nature and extent of the objectives in terms of total annihilation of the enemy's capacity to continue to operate and the large-scale involvement of the civilian population in various aspects of the war efforts.^{xvii} Nevertheless, the applicability of this theory or the validity of many of its elements, the role of modern technologies in increasing the loss of lives and the unusual intensity of the wars, or even the novelty of all-out mobilization of national resources for war efforts have been questioned. For example, it can be assumed that in many warlike, tribal pre-modern societies, larger segments of the male population would have become directly involved in wars, which shows that social structures are as important as modern technologies or industrial economies in removing the restraints of war. Furthermore, the complexity of modern weapon technologies or the requirements of industrialized warfare would not help explain the causes of violence within the context of military conflicts such as small or irregular wars that are characterized by the opposite attributes of conventional wars of the 19th and 20th centuries in Europe or North America.

The most horrendous forms of atrocities that may happen during or as a result of the war were inherently associated with colonialism in the eyes of Raphael Lemkin, who coined the term genocide in 1944.^{xviii} While the mainstream liberal thought of the 19th century was generally ready to approve the colonial conquests of the European powers, most 20th-century Western writers were critical of the legacies of imperialism.^{xix} Colonial violence can be understood as something representing many of the theories described above. It may happen in response to security concerns, the need for territorial expansion, or the fear of external competitors. Ben Kiernan, for example, shows how the myths created by the European colonialists about vast uninhabited lands ready to be cultivated in the African and American continents facilitated genocidal atrocities against the natives.^{xx}

Two themes of race and the so-called standard of civilization loom large in discussions of war atrocities within the context of colonial conflicts. Mark Salter argues that a priori assumptions about the "barbarity" of the enemy lead to war atrocities and victimization of civilians, while S. Balfour maintains that military organizations' treatment of opponents derives from perceptions of them. In his opinion, armies only apply the laws of war to conflicts where they believe that the other side is civilized, whereas "perceptions of the enemy as 'barbaric' increase the likelihood of civilian

victimization".^{xxi} Raymond Evans and Bill Thorpe have also considered the case of genocide against the Aborigines in Australia in terms of racial framings that depicted the victims as a sub-human, inferior race, the linkage between the human beings and other mammal species deserved to be exterminated because the lands on which they live was more valued than them.^{xxii}

Racial and civilizational theories are extremely helpful in addressing the question of war atrocities within the context of colonial warfare, especially when the purpose is to understand the language used to justify and even facilitate cruelties. However, one problem with their current framing is that they do not explain much about what happens during the war itself and in regard to the adversary on the battlefield. It seems evident that colonial soldiers and settlers do not think much about the inferiority or the savagery of their native enemies at the moment they commit atrocities against them as they are concerned with removing a formidable and apparently existential military threat. Colonialism could be genocidal in many of its aspects.^{xxiii} The entire project rested on the logic of integrating colonized societies into the European network of national economies and international state system. This could only be achieved by destroying local economies, traditional social divisions, labor patterns, and compatible lifestyles. Any resistance toward this agenda would be met with violence that could be unrestrained in many cases.

This criticism applies more generally to all the other theories explored above. They are more concerned with atrocities than war in studying the causes of war atrocities. The structural or agency-driven factors that they consider can operate even without the existence of war. The question, then, remains unanswered: how the situation of armed conflict plays its role in the occurrence of atrocities? Alexander B. Downes addresses the same shortcoming in the literature when he explores the advantages of resorting to unrestrained violence as a military strategy.^{xxiv} Two logics of desperation and denial inform the behaviors of armies in such situations. The sense of desperation and the need to end the war in a quick and less costly manner may override all other ethical and legal considerations in avoiding unnecessary cruelties. At the same time, the urge to abort local support to insurgents can result in the employment of atrocities against civilians to intimidate them. Territorial conquests and annexing foreign lands on which enemy or racially different populations live may also inspire genocidal military strategies.

These theories offer valuable insights into the causes of war atrocities in various types of armed conflicts. Still, given the vast differences between regular and irregular wars, it is reasonable to assume that understanding unnecessary violence in irregular wars requires an explanation that may not be applicable in regular military conflicts. It was mentioned above that the difference between regular and irregular is one of the most important organizing principles of modern war in the eyes of a number of writers. The difference, however, has not been problematized enough in international relations (IR), international law, and war studies in studying the causes of war atrocities. For example, despite the interest that IR has shown in the themes of globalization and the weakening of state actors' primacy in international relations, the dominant view is that the monopoly of the use of force still rests with states and their armed forces, while the non-state actors have no right in resorting to violence. The vast literature developed in response to the "new way of war" and the novel, unconventional forms of armed conflict still treat the phenomena as abnormal and a deviation from legitimate war.

This is nowhere more clear than in studies of COIN. The COIN literature recognizes that this form of warfare should be organized according to principles and methods different from regular armed conflicts, given the disparities between the two. However, despite the acute historical consciousness about the critical role that non-state armed groups have played in the history of war, it is still seen as an un-normal problem. Insurgency is a violent process intended for state-building that will be met with a response from the established authority. In the race for power among rival elite groups, the good of the people is usually not the overriding concern for any belligerents, and violence, even unrestrained, may bring advantages to the parties involved. The disparities between COIN and conventional war encompass both tactics and war objectives. The regular armies trained to use the maximum level of violence in order to achieve a quick victory in conflicts intended to conquer territories are poorly qualified to engage in wars "among the people" and for "controlling population" that require patience, prudence, and restraint. In a situation that cannot be expected to end quickly and cheaply, war can easily get out of control due to brutal and unproductive military tactics.

The debate between compliance and good governance theories in COIN literature deals with the same fundamental tension and sheds some light on the causes of war atrocities in such a special kind of warfare. In the compliance theory, the main actors involved in COIN do not aim to obtain

popular consent by political and economic reforms; the purpose is to capture power. COIN succeeds by the application of brute force in order to reduce the flow of resources to the other side and break its will and capacity to fight. Regardless of the moral and human costs of such attitudes, violence can be a factor in victory rather than a hindrance; as Jacqueline Hazelton writes: “counterinsurgency success is likely to continue to require the mistreatment of civilians, the deprivation of their human rights”.^{xxv} On the other hand, good governance theory argues that insurgency is the result of bad governance and the solution to it is an approach that gives priority to obtaining popular support through reforms, responding to the grievances that cause insurgency, and avoiding the infliction of damage to civilians.^{xxvi}

It was mentioned above that racial, and standard-of-civilization assumptions contribute a lot in explaining the root causes of unnecessary atrocities in colonial wars or in external COINs where racial and cultural discrepancies exist between the belligerents. There are, however, cases of small/irregular military conflicts where identity-based arguments seem inadequate to explain cruelties; in the second Boer war, for example, the British resorted to almost the same level of violence against both white Afrikans and the black native population. Casting doubt on the causal relationship between racial assumptions and war atrocities, Downes maintains that violence depended on the amount of resistance European colonizers faced in the colonies and the costs and difficulties they had to endure to succeed.^{xxvii}

Downes may go too far in dismissing the role of racial and civilizational presumptions and prejudices in aggravating or facilitating war atrocities, but there is a valuable insight in what he proposes instead. Employing unrestrained violence within the context of COIN is a military strategy designed to achieve victory. The irregular fighter cannot let the state enemy with superiority in terms of logistics and firepower determine the time and location of the battle. When the state forces approach, insurgents usually lay down their arms and blend in with the local population. Where insurgents enjoy support and shelter among the people, their suppression becomes an arduous and time-consuming task. These difficulties create strong incentives for the state power to achieve quick and inexpensive success through intimidating and employing terror against the supporting population. Such a strategy takes two primary forms; 1) indiscriminate targeting of civilians in order to increase the costs of helping the insurgents, and 2) resorting to tactics like forced relocation of the local

population to make a physical separation between the rebels and their civilian supporters.

A purely military perspective in the study of war treats the flouting of the laws of war as a mainly military strategy necessitated by the special conditions of COIN as a form of warfare among the people. The resort to unnecessary and unprovoked violence serves military purposes. Downes explains some of those conditions that make unrestrained violence an attractive, in some cases even effective, military strategy in COIN. But there are still elements left unattended in his works and among other scholars who have explored the issue with similar viewpoints. A military strategy is not just about defining the war goals and determining the military tools and tactics needed to achieve them; it is also, especially in democracies, about managing domestic and international public opinions, propagating the war rhetoric, and justifying certain practices in its conduct. If the propaganda campaign successfully convinces the audiences, justifications for violence can be institutionalized through laws, regulations, interpretations, and other similar mechanisms that can facilitate the repetition of violent practices in wars.

This is where ideational factors of the kind that racial or civilizational theories emphasize come to play their role. The justification of unrestrained violence against the enemy and the necessity to suspend the normal rules and practices in fighting it stems from a constructed image of the enemy as a special and unique type of threat. Racial and civilizational stereotypes feed this securitization of the enemy in the COIN, but in the case of atrocities that happen during wars, those stereotypes need to be funneled through notions about the nature of the military threat they pose. In other words, war atrocities do not happen just because the enemy is uncivilized and savage, and its removal is necessary for a more civilized condition to prevail. They happen because first, the enemy combatant in COIN has no right to take up arms, and second since he/she fights in treacherous, barbarous, and unnoble ways.

Thus, it is necessary to situate this work within another vital debate in explaining the causes of unnecessary violence in war. There are, generally speaking, two theories to explain the exception of marginalized categories of fighters in relevant domestic and international laws of armed conflict. In one set of theories, the exception is the natural result of the advent and consolidation of the modern state. This political entity claims a monopoly over using force inside national borders and in armed clashes with outside

forces. It can only establish the exclusive right to resort to violence by eliminating all other armed competitors.^{xxviii} Waging war became a prerogative of states which rendered all forms of armed actions by non-state entities unlawful. The political pretensions of the modern state, along with the alleged revolution in military affairs, as discussed by other scholars like Charles Tilly, marked the advent of modern conventional warfare and further de-legitimized irregular fighters.^{xxix}

Another theory highlights the significance of moral arguments against the irregular fighter. Aversion toward irregulars has a long history in moral and legal traditions. It is usually assumed that their tactics and means of war are violent and put the lives of civilians in unnecessary danger. In one notable example of such arguments, Francis Lieber, the compiler of the famous Lieber Code during the American Civil War, asserted that irregular fighters were notorious for their looting and terror tactics. On the one hand, they had no source for their supplies other than plunder; on the other hand, their victory could only be achieved by intimidating the people and terror.^{xxx} Others have argued that irregular methods of warfare blur the differences between armed and unarmed civilians and confuse the counterinsurgent force.^{xxxi}

Critics of this view in explaining the reasons for the exclusion of irregular fighters from a recognized status in the laws of war emphasize that regular military organizations have seldom shied away, in the modern period, from enlisting irregular units or tactics in their armed conflicts. In regard to accusations about the violent nature of military tactics attributed to irregulars, it has been noted that regular armies also consistently resort to brutality against civilians, which has intensified, especially since the late 19th century onwards, with technological advances in weapons systems. Furthermore, regular armies have been notorious, in some cases, for their readiness to employ treacherous, even terror, tactics against various opponents, as exemplified by contemporary practices like targeted killing or the use of human shields in military operations. Finally, critics point out that moral and humanitarian considerations about the safety of civilians during armed conflict situations only became overriding concerns, reflected in the codified laws of war after the end of World War II. Even today, civilian immunity is contingent upon many constraining factors; for example, respect for civilian lives and safety would only apply to those who submit to the rule of the occupation forces and refrain from any resistance against them.^{xxxii}

There is, however, another explanation which is also moral in nature. It is based on the principle of reciprocity which forms the linchpin of the laws of war. Irregulars are not worthy of a recognized status as lawful combatants because they, unlike regular military organizations, do not enjoy discipline and do not respect the rules that govern the conduct of war. In many cases, an invariable state justification for violating the rule of war in COIN has been the unwillingness of the enemy or even its inability to abide by the requirements of reciprocity. One example is Lieber's observation that guerrilla bands had no choice but to kill their captives since they had no facility to keep them.^{xxxiii} Nevertheless, in Lieber's view, the physical constraints that made the guerrillas unable to respect the rules were nothing compared to their "general and heinous criminality, of robbery and lust" that gave a strong moral dimension to their position vis-à-vis the laws of war and the principle of reciprocity. It is also noteworthy that, in Lieber's opinion, the heinous criminal nature of these bands ultimately stemmed from the fact that they were not disciplined fighters. Guerrillas could not be expected to abide by the rules because they were not professional, properly trained, disciplined, regular soldiers.

As Sibylle Scheiper demonstrates in her work, *Unlawful Combatant: A Genealogy of the Irregular Fighter*, accusations concerning the principle of reciprocity are ambiguous, subjective, and a priori assumptions about the nature of the enemy that may have very little to do with the actual conditions of war. It could be well expected that the counterinsurgent force would suspend the laws of war even before testing the willingness of the insurgents to respect the rules. Lieber's points raise a number of questions, however, that reveal the highly moral nature of the reciprocity argument. His remarks contain two points; first, irregular methods of warfare are tantamount to a barbarity that is the inevitable result of their indiscipline; and second, a civilized, disciplined army has to fight a criminal, undisciplined force whether in the context of internal or external COIN.

This dissertation tries to combine elements of both statist and moralist theories and takes the analysis to another level; that of international system of states. Neither violence in war, nor abhorrence of certain types of warriors are modern phenomenon. Nonetheless, it can be demonstrated that legalization of the distinction between various categories of fighters and differences in treatment with them through complex rules and laws of war, whether customary or codified, is a product of the modern international system of states.

In IR literature, international system usually denotes a condition of continuous and sufficient level of contacts between two or more states. These contacts are of such a magnitude that make the behaviors of each state an important factor in the calculations of others; thus, they all have to behave as parts of a whole (system).^{xxxiv} In their analysis of international state system, mainstream IR scholars have been, primarily, concentrated on material factors. Their approach has come under criticism by middle-ground IR theories such as the English School and Constructivism. They argue that ideational factors play as vital a role in the creation, evolution, function and future direction of the system as material ones. History, culture, moral values, norms, rules, ideology, language and communication are among the ideational factors that are emphasized by various scholars associated with these middle-ground theories.

This dissertation explores the question how culturalist approaches to IR might have justified and facilitated war atrocities in the context of counter-insurgency and irregular warfare. The emphasis would be on moral, cultural and legal components of the atrocious COIN strategies and tactics. Where do these factors stand in the spectrum of structural vs. agency-driven factors? It is, more or less, an established position among many social science theorists that the relationship between these two sets of factors is mutually constitutive. It means that while the agents cannot produce, reproduce or change anything independent of the structures imposed on them, it is the agents who give meaning to, interpret and even transform inanimate structures through their different understandings of them. Furthermore, keeping the rigid distinction between the two will not be easy in some cases where agency-driven institutions and processes create structures of their own. The morality, culture and law are such cases that, although enacted by human agents, give rise to complex structures that constrain and determine the range of options available to them.

The image of the COIN enemy constructed according to racial, civilizational, and above all, moral stereotypes about the nature of the threat posed by them are reflected in moral and legal concepts and categories that serve to exclude the irregular fighter and even the civilians that are suspected of abetting them from the rights and protections guaranteed in "normal" laws and customs of war. The moral/legal tools employed to facilitate and justify the perpetuation of war atrocities operate based on exclusion criteria that may vary over time. In all cases, however,

their main function is to institutionalize the practice of excluding certain situations, groups, or individuals from the normal state of affairs. In the case at hand, moral assumptions and legal tools governing COIN justify why the normal international rules and customs of war or even certain principles, rights, and protections enshrined in domestic laws cannot be extended to insurgents and irregular fighters.

Definitions and Methods

This study focuses on exploring the causes of war atrocities within the context of external COIN and how those atrocities are reflected and facilitated by moral, cultural and legal mechanisms. Defining individual examples of war atrocities like genocide, torture, pillaging, killing civilians or injured/captured enemy combatants, indefinite internment, forced relocation, deportation, and so on is easier than defining the general concept itself. The present work takes into account case studies that span about a hundred years, from the late 19th to the second half of the 20th centuries. Some may find a single definition of war atrocities based on fixed examples drawn from subsequent domestic regulations and international treaties on the laws of war and its extension into all case studies considered here objectionable.

Although many tend to use war atrocities and war crimes interchangeably, there are differences between the two as the latter is a technical legal category that refers to specific and clearly defined actions during armed conflict situations in international legal documents. On the other hand, the term war atrocities is a broader designation bereft of such strict legal connotations. An act can be atrocious even without being criminalized under the laws at any given time. Many of the examples of war crimes and crimes against humanity, recognized only after 1945, had been abhorrent for centuries and across many cultures. Furthermore, as this study will try to argue, international actors take advantage of various legal tools to offer conflicting interpretations of the international laws of armed conflict or enact domestic emergency laws that justify their deviations from the normal interpretations and understanding of the law. Such measures may challenge claims of war crimes leveled against them but do not change the brutal and violent nature of their war strategies and tactics.

In this study, war atrocities denote all kinds of such cruelties and violence, whether in the form of organized practices or individual behaviors

during armed conflict situations, that, regardless of their legal status under relevant domestic and international laws, are still regarded as atrocious by either domestic and global audiences at the time of the occurrence of cruelties or our contemporary sensitivities. The audiences can include the opinion of the general public or the reaction of international organizations and other state actors as reflected in official statements, media, or other contemporary visual, audio, and literary outlets. Prevalent moral considerations can also be a source of detecting the nature and extent of the practices that could be deemed, at the time, as excessively violent. Many earliest international documents of the laws of war in the 19th century reflect a language that invokes such overriding moral concerns shared among many in the international system. Notions such as “requirements of humanity”, “progress of the civilization”, or “the usages among civilized nations” portent both the width and the limitations of such moral principles in judging the conduct of war.

Finally, it is worth noting that in some cases, a particular measure practiced by belligerents might not be regarded by both the customs and laws of war and prevalent moral considerations at the time to be excessively violent. Yet, they could lead, either intentionally or unintentionally, to cruel outcomes. One notable example is the policy of forced mass relocation of local populations from conflict zones, which was seen as an effective strategy to deny the insurgents a vital source of support and shelter. Many Western powers practiced forced relocation in their dealings with colonial insurgencies in the 19th and 20th centuries. It did not provoke public outcries of the sort that more conspicuous cases of atrocities such as mass killing or torture would, or was not against the laws and customs of war or the so-called “usages among civilized nations” in the parlance of pre-World War II international law. Yet, in the majority of cases that such a measure was adopted, it inflicted unspeakable harm, even death, to the subjected population. Observers today can only understand the true violent nature of such practices with the benefit of hindsight.

Insurgencies and counterinsurgencies are not new phenomena in world history. Nevertheless, the origins of the term counterinsurgency in its modern meaning date back to the beginning of the 20th century, and it only came to wide usage in the latter half of that century. Insurgency is an attempt to overthrow an incumbent government or regime using force that, in many cases, takes the form of irregular or guerrilla warfare. The reason is that insurgents are usually, and at least at the beginning of their campaign, in a disadvantageous position in terms of numbers, weapons and

finance vis-à-vis stronger governmental forces. Irregular war has always been how the weak fight with the strong by avoiding open, conventional battles and instead relying on the cumulative effects of small victories gained through speed, mobility, deception, ambush, and disruption of the supply and communication routes.

Insurgencies are either against domestic political regimes or foreign occupation. Beginning from the 19th century, when insurgencies and counterinsurgencies gained renewed attention in studies of war, one of the main forms of the latter has been a rebellion against colonial powers, which came to be intertwined with modern Western ideologies of nationalism and Marxism in the 20th-century wars of national liberation. However, decolonization, the collapse of Communism, and the end of the age of ideologies at the end of the last century were not accompanied by a meaningful decrease in the frequency of insurgencies across the globe. Religious and ethnic rebellions or even insurgencies against foreign occupation are still ubiquitous forms of armed conflict in the first decades of the 21st century.^{xxxv}

This dissertation is focused on external COIN, where a state power intervenes in the suppression of a rebellion somewhere outside its national borders. It may be carried out to support an allied regime for political or ideological reasons or to control the repercussions of the collapse of an established authority in another territory. Such interventions can take several forms; foreign states may help their allies only through political, diplomatic, or economic means; they can also send out weapons and military advisors, but sometimes intervention is direct, and states engage in all-out military operations with foreign insurgents using their own armies.

It was mentioned earlier that insurgencies usually take the form of irregular warfare due to the asymmetries of power between the two sides at various stages of the conflict. Who is an irregular fighter? Partisans, guerrillas, terrorists, mercenaries, pirates, and bandits are all categories of armed groups who have been described as such throughout history. Charles Callwell, one of the earliest COIN specialists, distinguished irregular forces from modern regular armies by their inferior armament, organization, and discipline.^{xxxvi} Moral and legal opinions of irregulars which affect the definition of various categories of such fighters and determine the rules governing treatment with them have varied across time and space; for example, while in recent decades, international law has shown willingness to incorporate many categories of rebels with "legitimate" political cause

into its broader definition of "enemy combatant", the legal status of those who are branded as terrorists, mercenaries, pirates or bandits is not still clear which means that these categories of fighters are largely deprived of normal rights and protections envisaged in the laws of war.

Generally speaking, there are three main criteria for defining irregulars, each with its own flaws and inadequacies. First, the use of asymmetrical military tactics and fighting methods like hit and run, ambush, surprise attacks, avoiding open and face-to-face battles, or even resort to terrorist practices such as assassination, hostage-taking, suicide missions, and the use of human shields.^{xxxvii} The problem with this criteria is that these tactics traditionally attributed to irregular forms of war are not exclusive to irregular fighters, as ample evidence of regular armies' resorting to them, both in the past and present, demonstrate. The second standard in defining irregulars concerns the intense political characters of such fighting organizations. Insurgents act according to the dictates of a political cause that almost in all cases deals with the capture of power, usually inspired by a political ideology. Insurgent movements cannot recruit their members like a state agency; they need to sell a political cause to their audience and show them that they fight for the people's good and socio-economic change.^{xxxviii} However, excessive emphasis on the political cause will exclude important categories of irregulars like bandits or mercenaries who fight for greed rather than the public good; furthermore, defining irregulars based on their political character is misleading because the soldiers of a regular state army may also fight for the good of the people. Finally, the lack of hierarchical command in irregular fighting organizations^{xxxix} is also inadequate because there are a plethora of historical cases where irregulars have fought as a supplementary force to regular state armies, as is the case, for example, with many settler combat units who were assisting opposing European colonialists during the Seven Years Wars in the 18th centuries, various local self-defense militias who were organized and equipped by European imperialists in many of their colonial possessions in the 19th and 20th centuries and also myriads of national resistance movements during two world wars.

The problems in defining the irregular actually help clarify the case that this dissertation aims to make. The idea of "irregular" is contingent upon ever-changing political and moral sensitivities. Using a historical approach highlighting the evolution of the concept of irregular shows the unfixed nature of the definition and constant revisiting of the categories of fighters deemed to be so. This evolution reflects, among other things, in the

language of the laws of war. The path that has been taken hitherto and has culminated in recognition of many categories of insurgents in the two additional protocols to the 4th Geneva Convention in the late 1970s clearly demonstrates the time-specific aspects of our definitions of lawful and unlawful combatants and relevant legal categorizations. The way international state actors define irregular/unlawful combatants, in turn, determines how they treat their military adversaries and the legal tools they employ to institutionalize and justify their practices in this regard.

This study will investigate the question of war atrocities within the context of external COIN from a historical and cultural perspective in a period from the late 19th century to the second half of the 20th century. Yet, it takes a critical stance toward the culturalist theories of IR in order to explore their role in the justification and facilitation of war atrocities. Culturalism in IR theory began as part of a larger reaction to the inadequacies of mainstream materialism. The ontological and epistemological dichotomies that mainstream IR was accused of creating and upholding between domestic/international, agent/structure, facts/values, realism/idealism (normative theory), scientific/philosophical methods came under particular criticism.

The so-called ‘cultural turn’^{xi} has widened our knowledge of international relations in so many important ways. Sensitivity to cultural underpinnings of international power relations poses a plethora of new questions and research topics. It sheds light on so many, hitherto, unexplored aspects of world politics, chief among them, the role of values, identities and communal bonds, their temporal and spatial developments, and the processes and ideas through which they are expressed. Yet, it also, give rise to numerous conceptual and analytical problems. Culture is a hard-to-define and complex phenomenon full of explicit and implicit patterns transmitted through conflicting meanings, ideas, values, and symbols and demonstrated by human behaviors subject to the influences of so many other factors. V. Hudson defined culture as “human made part of the environment”;^{xli} it consists of patterns, meanings and knowledge that can be communicated with other human beings. Mainstream IR theories may content themselves with scientific methods in measuring and comparing power, wealth, security, etc., but culturalist approaches have a point in questioning the social knowledge underlying such concepts.

As far as this dissertation is concerned, the culturalist approaches themselves are creating a social knowledge in their endeavors to highlight

the importance of 'social knowledge' in international relations. Culturalism both in IR theory and in COIN studies is replete with contradictory ideas, statements, understandings and imaginations. This dissertation, particularly, focuses on two examples; the English School's notion of 'international community' and 'military orientalism' in studies of military history and strategy.

Reacting to mainstream theories' ontological materialism and epistemological positivism, the English School established its credentials as a middle-ground IR theory committed to the study of ideational as well as material factors in international relations. The crowning theoretical achievement of the English School in IR theory is the notion of 'international community' or the 'society of states'. This study tries to explore the hierarchization and excluding potentials in this notion's communitarian approach. It emphasizes the role of shared histories, values and rules in the formation of common cultures and identities. These, in turn, lead to particular configurations of political order that set the exclusion/inclusion criteria and the hierarchization mechanisms through which the rightful members of the community (society) are distinguished from the 'others' who are perceived as threatening sources of difference.

One of the main functions of orientalism, in the eyes of E. Said,^{xlii} was 'othering' the Orient due to perceived different characteristics that diverted from Western norms. In military studies, orientalism refers to a wide range of works whose main assertion is a belief that the Westerners conduct their battles differently from the way the rest do. While Western war is rational, restraint, and regulated, Eastern way of warfare is not. This study tries to show how such beliefs contribute to the exclusion of particular categories of combatants and armed conflict situations from the normal laws and customs of war.

The study will employ a case study methodology that aims to conduct an in-depth investigation of the questions it raises – how the order and culture created by the international system of states affects our understanding of regular and irregular warfare; and how this understanding, in turn, shapes the rules of the conduct of war in the latter. The purpose is to understand how the idea of the enemy in COIN has changed – or not – over time and how this evolutionary process affected the institutions devised to counter that enemy.

The three cases chosen to conduct the research each have been taken from a different period in recent global history; the age of imperialism, the Cold War period, and the age of the global war on terrorism. These three periods are essential in order to cover the major kinds of external COINs, including colonial warfare, anti-Communist campaigns of the latter half of the 20th century, and counter-terrorism. The case studies should be chosen in a way to provide opportunities for investigating the consistencies or inconsistencies in the states' COIN practices and the legal means through which those practices have been institutionalized and justified.

Also, the cases should reflect the behaviors of the leading states of the international system. The reason is that laws and customs of war are heavily influenced by the practices of these prominent actors in international politics. Their actions, the way they promote or violate certain norms and rules or dispute interpretations of them for various reasons and through various mechanisms, affect the laws of war more profoundly than those of other states. This reality reflects the highly hierarchical structure of the system in which power mirrors not only the material differences but also social and cultural inequalities among the states. The material strength and the socio-cultural advantages of the leading states of the system ensure that the moral and legal foundations of their justifications or understandings of law could appear more acceptable or plausible to others.

The United States has been an important global player in all three eras under consideration here. While not a significant colonial power in the 19th or 20th centuries, it had its moments of imperial conquest that culminated in the American-Spanish war of 1898 and its subsequent annexation of Cuba and the Philippines. Later on, two world wars established the U.S position as a dominant global power and one of the two Cold War superpowers. Since the collapse of the Soviet Union and the end of the Cold War in the early 1990s until recently, the U.S enjoyed a few years of being the unchallenged global hegemon, and it is still by far the most powerful global actor.

The case studies chosen for this study are the American COINs in the Philippines from 1898 to 1902, Vietnam from 1964 to 1973, and Afghanistan and Iraq in the first two decades of the 21st century. Counter-insurgency warfare is not exclusive to the American military experience in the past hundred years, as many other leading states of the international system (Russia, France, Britain, Germany, ...) have been involved in these types of armed conflicts at some point in the 20th and 21st centuries. The cases related to the American wars have been chosen because for most of this

period, the United States has been the leading state of the international system whose preferences and values had a great share in shaping the governing norms of the system and also because in each period under consideration (the age of imperialism, the Cold War and the age of global war on terrorism), an example of American COIN can be found. There are also more practical reasons for choosing cases related to the United States since archival materials and other data necessary for conducting this study in languages other than English or places outside the United States are hard to access.

Relying on historical case studies is helpful for a better understanding of the causes of atrocities within the context of external COIN. However, this study is subjected to a real danger of polarization because of concentrating on the violence done by the modern Western state against non-Westerners. Too much emphasis on the theoretical elements of this research without considering its particular context can easily lead to a distorted view of the qualitative differences between the nature of violence in the non-Western and Western COIN, between the violence Westerners commit against the rest, and the cruelties they may suffer at the hands of non-Westerners. If anything, this study can contribute to the understanding of the processes through which atrocious subjective constructs, justifications, and semi-legal mechanisms in the peripheries may come back to haunt the Metropol; while it should be recognized that the same processes can also be exploited by the non-Westerners (along with ideational resources of their own) to perpetrate violence against the Westerners.

Another possible criticism of the project outlined here may be its over-emphasis on the state as the agent of violence in COIN at the expense of atrocities committed by non-state actors or even those that are initiated by individuals at the service of the state but acting independently or in violation of their official capacities. It is indeed a legitimate critique since war atrocities are the outcome of complex processes that, in many cases, are hard to attribute to a specific or single agent. Serious historiographical research can and indeed has shown that under each COIN case, including the ones that have been chosen for this study, various geopolitical, political, social, bureaucratic, and cultural factors in addition to myriads of state, sub-state, and non-state agents have been involved in excessive violence. Thus, this dissertation has to recognize the nearly insurmountable complexity of its subject matter while remaining faithful to its defined scope of the study.

This study employs an archival method in gathering the data necessary for the research, which mainly includes military-administrative documents in state military-political archives containing information regarding the legal basis of the policies or particular measures adopted during wars, military orders, and regulations governing the conduct of warfare. Legal justifications for war policies and practices may reflect in states' public proclamations such as press statements, public speeches, interviews, and other forms of statements by political leaders (presidents, members of the house, senators, civil and military officials involved in decision-makings or their implementation, and other notable figures). This evidence is usually accessible through newspapers or collections held by presidential libraries, the Congress, or the National Archive.

Information about the war rhetoric and inculcations can be found in written or unwritten materials related to civil-military personnel involved in armed conflict situations. They are usually published in the form of memoirs or held by various collections and archives. More technical legal justifications or specific mechanisms through which war-related atrocious practices are institutionalized can be accessed, usually through exploring various governmental archives. Administrative and legal documents, correspondences, executive and military orders, official reports, and official instructions regulating military operations belong to this group of evidence.

John Taylor's *The Philippines Insurrection Against the United States: A Compilation of Documents with Notes and Instructions*^{xliii} Provides, in five volumes, an extensive collection of materials related to the Filipino guerrilla movement against the United States. Several collections like the Spanish- American War Collection in Wisconsin Veteran's Museum and Washington State Historical Society, to name but a few, keep letters, correspondences, and other items related to American military and civil personnel involved in the Philippines' COIN from ordinary citizens to military governors of the islands. Official materials about the conquest, administration, and military operations in the Philippines can be found in several places, such as DeGoyer Library (Southern Methodist University), Knight Library (University of Oregon), and Rutherford B. Hayes Presidential Center Library. Finally, the U.S Government Printing Office has published extensive collections of materials related to the special committee set up in the 57th Congress to investigate reports of war atrocities in the Philippines.

In the case of the Vietnam war, Edwin S. Moise's Vietnam War Bibliography is a massive collection of primary and secondary sources, including the collections held by presidential libraries, the National Security Council, the Defense Department, Congress, and the U.S Army. Under

topics that cover a wide range of military, political, administrative, and legal aspects of the war in Vietnam, Moise gathers a comprehensive collection of sources that are especially useful in studying the military strategies and cases of war atrocities during the Vietnam war. The Vietnam Project of Texas Tech University (TTU) keeps records of weekly, monthly, and yearly reports of events and the general situation in Vietnam from 1964 to 1972 written by various agencies such as the Joint Chiefs of Staff, Department of Defense, Central Intelligence Agency, and State Department. Louise K. Barnett discusses proceedings of trials held by army tribunals into cases of war crimes by American soldiers in his *Atrocity and American Military Justice in Southeast Asia*.^{xliv} The Vietnam Project of TTU retains reports of the proceedings of the unofficial committee set up by Representative Dellums of California in 1971 to investigate reports of severe atrocities in Vietnam.

Primary and archival sources in the case of the war on terror are more scattered due to the fact that many of the items have not yet been processed or made public. Apart from a collection of sources held by President George W. Bush's Library, The National Archive (NARA) preserves a body of primary sources under the general label of terrorism. Some of these items include papers, reports, advisory opinions, policy outlines, and other similar documents produced by relevant governmental agencies like the CIA, FBI, DOD, DOJ, or Congressional committees. Besides Inman Report on overseas security and the 2006 National Strategy for combating terrorism, the collection held by NARA contains presidential and DOD directives, instructions, executive orders, and statements. Memoirs or other written and unwritten sources published in recent years by American or non-American civil and military personnel involved in Iraq and Afghanistan wars are valuable sources for the atrocities committed. A U.S Army policy concerning the treatment of POWs, civilians, and other detainees was published by the Departments of the Army, Navy, Air Force, and the Marine Corps in 1997. Human Rights Watch published first-hand accounts of torturing Iraqi detainees in 2005.^{xlv} Finally, The Senate's Committee on Armed Services published reviews of various aspects of detainment and interrogation policies and procedures between the years 2004 to 2008.

In the end, it is worth noting that non-American archives, including those belonging to the nations involved in wars against the United States, can be a tremendous help in balancing war narratives expected to be offered in American sources. Where these sources can be accessed online and in English, they provide an invaluable source of information that will be

consulted in connection with the case studies under investigation in the present work.

Plan of the Study

This study is divided into two parts. The first part lays out the general theoretical framework. Chapter 2 explores the history of violence in counterinsurgency from ancient times to the late 19th century. Some common themes and forms of atrocities in irregular warfare will be discussed. The third chapter builds on the findings of chapter 2 in order to lay out a theory of the creation of the image of the enemy as a source of threat in irregular war and how that image leads to the facilitation and justification of excessive violence against it.

Chapter 4 follows the development of international law of armed conflicts from the 16th century until the 1977 Additional Protocol I of the Fourth Geneva Convention. There are certain criticisms of the laws' function and the historical evolution that will be addressed. The chapter explores various legal mechanisms, and the technical language states employ to justify or exempt themselves from upholding standards of appropriate behavior in COIN. The purpose is to understand the legal technicalities that help states evade the laws and norms of armed conflict and the circumstances under which their justifications become more plausible.

The second part of the work contains chapters 5, 6, and 7, in which an in-depth investigation of the three case studies will be conducted. In each case, both public statements and official administrative-legal documents authorizing particular war-related practices or justifying the existing ones will be explored to see how they may fit into the theoretical framework presented in the previous chapters.

Finally, a conclusion chapter summarizes the general arguments, explores implications, and identifies some likely areas for further research.

Endnotes:

- ⁱ “Double standards: Western coverage of Ukraine war criticised”, *Aljazeera*, Feb 27, 2022, at: <https://www.aljazeera.com/news/2022/2/27/western-media-coverage-ukraine-russia-invasion-criticism>.
- ⁱⁱ Carl Schmitt, *Theory of the Partisan: Intermediate Commentary on the Concept of the Political*, translated by G. L. Ulmen, (New York: Telos Press, 2007), p: 3.
- ⁱⁱⁱ Sibylle Scheipers, *Unlawful Combatant: A Genealogy of the Irregular Fighter*, (Oxford University Press, 2015), pp: 28-29.
- ^{iv} Benjamin Valentino, Paul Huth, and Dylan Balch-Lindsay, “Draining the Sea: Mass Killing and Guerrilla Warfare”, *International Organization*, 58/2 (2004), pp: 357-407; Stathis N. Kalyvas, *The Logic of Violence in Civil War*, (Cambridge: Cambridge University Press, 2006).
- ^v Michael J. Englehardt, “Democracies, Dictatorships and Counterinsurgency: Does Regime Type Really Matter?”, *Conflict Quarterly* 12, no. 3 (Summer 1992), pp: 52-63; and R. J. Rummel, “Democracy, Power, Genocide and Mass Murder”, *Journal of Conflict Resolution* 39, no. 1 (March 1995), pp: 3-26. In a graduation speech at West Point military academy, President George W. Bush identified “fighting fair” as one of the features that distinguishes democratic governments from other types of international actors, see: United States Military Academy West Point, New York, “President Bush Delivers Graduation Speech at West Point”, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/06/20020601-3.html> (accessed June 29, 2022).
- ^{vi} See, for example, Alexander B. Dowson, *Targeting Civilians in War*, (Ithaca and London: Cornell University Press, 2008), p: 2 (E-book PDF version); Alexander B. Downes, “Restraint or Propellant? Democracies and Civilian Fatalities in Inter-state Wars”, *Journal of Conflict Resolution* 51, no. 6 (2007), pp: 872-904. Ivan Arreguin-Toft, “The [F]utility of Barbarism: Assessing the Impact of the Systematic Harm of Non-combatants in War”, paper presented at the annual meeting of the American Political Science Association, Philadelphia, PA, August 2003, https://www.belfercenter.org/sites/default/files/legacy/files/Arreguin_Toft_APSA_2003.pdf (accessed June 29, 2022).
- ^{vii} See, among other works, Jeffrey W. Legro, “Which Norms Matter? Revisiting the ‘Failure’ of Internationalism”, *International Organization* 51, no. 1 (Winter 1997), pp: 31-63; Isabel V. Hull, *Absolute Destruction: Military Culture and the Practices of War in Imperial Germany*, (Ithaca: Cornell University Press, 2005); Michael S. Sherry, *The Rise of American Air Power: The Creation of Armagedon*, (New Haven: Yale University Press, 1987); and Conrad C. Crane, *Bombs, Cities, and Civilians: American Airpower Strategy in World War II*, (Lawrence: University Press of Kansas, 1993).
- ^{viii} Benjamin A. Valentino, *Final Solutions: Mass Killing and Genocide in the 20th century*, (Ithaca: Cornell University Press, 2005); S Dezfuli, “Iran’s Constitutional Revolution and Religious Reactions to It”, *Asian Social Sciences*, 12/11 (2016), 11-22, [10.5539/ass.v12n11p11](https://doi.org/10.5539/ass.v12n11p11).
- ^{ix} Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination From Sparta to Darfur*, (New Haven and London: Yale University Press, 2007), (epub version).
- ^x For the Roman war in Numantia, see Sallust, *The Jugurthine War*, revised by John Selby Watson, (New York and London: Harper and Brothers, 1899), 7.1; For a case of Chinese genocide in Zhungaria in the 18th century, see Michael E. Clarke, “In the Eyes of Power: China and Xinjiang from the Qing Conquest to the ‘New Great Game’ for Central Asia, 1759-2004”, (M.A Thesis), (Brisbane, Queensland: Department of International Business and Asian Studies, Griffith University, 2004).
- ^{xi} The violence inherent in the suppression of local resistance toward imperial rule has been studied by Peter Rex, *The English Resistance: The Underground War Against the Normans*, (Stroud, UK, 2004); Nicholas P. Canny, “The Ideology of English Colonization: From Ireland to America”, *William and Mary Quarterly* 30, no. 4 (1973), pp: 575-598; and Katie Kane, “Nits Make Lice: Drogheda, Sand Creek, and the Poetics of Colonial Extermination”, *Cultural Critique* 42 (1999), pp: 81-103.
- ^{xii} Benjamin A. Valentino, Paul Huth, and Dylan-Lindsay, “Draining the Sea: Mass Killing and Guerrilla Warfare”, *International Organization* 58 (Spring 2004); Michael Freeman, “Genocice, Civilization and Modernity”, *British Journal of Sociology* 46, no. 2 (1995), pp: 207-23.
- ^{xiii} William W. Hagen, *Germans, Poles, and Jews: The Nationality Conflict in the Prussian East, 1772-1914*, (Chicago and London: 1980); Chelvadurai Manogaran, “Space-related Identity in Sri

Lanka" G. H. Herb and D. H. Kaplan (eds.), *"Nested Identities: Nationalism, Territory and Scale"*, (Lanham, MD, 1999), pp: 199-216.

^{xiv} Tara Zahra, "Looking East: East Central European 'Borderlands' in German History and Historiography", *History Compass* 3 (2005), pp: 1-23; and Eagle Glassheim, "National Mythologies and Ethnic Cleansing: The Expulsion of Czechoslovak Germans in 1945", *Central European History* 33, no. 4 (2000), pp: 463-86.

^{xv} Zygmunt Bauman, *"Modernity and the Holocaust"*, (Cambridge: Cambridge University Press, 1989); and Zygmunt Bauman, "The Duty to Remember, But What?" in James Kaye and Bo Strath (eds.), *"Enlightenment and Genocide: Contradictions of Modernity"*, (Brussels: P.I.E-Peter Lang S.A., Éditions Scientifiques Internationale, 2000), pp: 31-57.

^{xvi} Anthony Giddens, *"The Consequences of Modernity"*, (Stanford, CA: Stanford University Press, 1990); Stuart Hall, David Held, Don Hubert, and Kenneth Thompson (eds.), *"Modernity: An Introduction to Modern Societies"*, (Cambridge, MA: Harvard University Press, 19995); David Harvey, *"The Condition of Postmodernity: An Inquiry into the Origins of Cultural Change"*, (Wiley-Blackwell, 1991); Max Horkheimer and Theodor W. Adorno, *"Dialectic of Enlightenment"*, translated by Edmund Jephcott, (Stanford: Stanford University Press, 2007).

^{xvii} Some of the key works related to the total war theory include S. Forster and J. Nagler (eds.), *"On the Road to Total War: The American Civil War and the German Wars of Unification, 1861-1871"*, (Cambridge: Cambridge University Press, 1997), R. Chickering and S. Forster (eds.), *"Great War, Total War: Combat and Mobilization on the Western Front, 1914-1918"*, (Cambridge: Cambridge University Press, 2000), R. Chickering and S. Forster (eds.), *"The Shadows of Total War: Europe, East Asia, and the United States, 1919-1938"*, (Cambridge: Cambridge University Press, 2003); Daniel Pick, *"War Machine: The Rationalization of Slaughter in the Modern Age"*, (New Haven: Yale University Press, 1996); and Jeremy Black, *"The Age of Total War, 1860-1945"*, (London: Praeger, 2006).

^{xviii} A. Dirk Moses, "Empire, Colony, Genocide: Keywords and the Philosophy of History" in A. Dirk Moses, *"Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History"*, (New York: Berghahn Books, 2008), pp: 3-40.

^{xix} For an example of the 19th-century approvals of colonialism in the non-European world, see Alexis de Tocqueville, *"Writings on Empire and Slavery"*, Jennifer Pitts (ed.), (Johns Hopkins University Press, 2003). For examples of the generally negative attitude toward colonialism among the Western writers of the 20th century that still acknowledge some of its more positive aspects in terms of facilitating cultural exchange or improving the living conditions in less developed parts of the world, see Bronislaw Malinowski, *"A Scientific Theory of Culture and Other Essays"*, (Marcel Press, 2014), (Kindle version); and Arnold J. Toynbee, *"A Study of History"*, (Oxford: Oxford University Press, 1987). Leftist intellectuals such as Frantz Fanon or Jean-Paul Sartre saw nothing but exploitation and degradation of the native people in colonialism, see Jean-Paul Sartre's preface on Frantz Fanon, *"The Wretched of the Earth"*, translated by Richard Philcox (Grove Press, 2021).

^{xx} Ben Kiernan, *"Blood and Soil"*.

^{xxi} Mark B. Salter, *"Barbarians and Civilization in International Relations"*, (London: Pluto, 2002); Sebastian Balfour, *"Deadly Embrace: Morocco and the Road to the Spanish Civil War"*, (Oxford: Oxford University Press, 2002), p: 224.

^{xxii} Raymond Evans and Bill Thorpe, "Indigenocide and the Massacre of Aboriginal Histor", *Overland* 163 (2001), pp: 21-40. Also, see Raymond Evans and Robert Orsted-Jensen, "I cannot Say the Numbers That Were Killed: Assessing Violent Mortality on the Queensland Frontier", paper presented at "Conflict in History", 33rd annual conference of the Australian Historical Association, 7-11 July 2014, https://espace.library.uq.edu.au/data/UQ_353456/UQ353456.pdf.

^{xxiii} Dominik J. Schaller, "From Conquest to Genocide: Colonial Rule in German Southwest Africa and German East Africa" in A. Dirk Moses, *"Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History"*, (New York: Berghahn Books, 2008), pp: 296-324.

^{xxiv} Alexander B. Downes, *"Targeting Civilians in War"*, (Ithaca: Cornell University Press, 2008).

^{xxv} Jacqueline L. Hazelton, *"Bullets, Not Ballots: Success in Counterinsurgency Warfare"*, (Ithaca: Cornell University Press, 2021).

^{xxvi} Sources on Good Governance theory include Julian Paget, *"Counter-insurgency Operations: Techniques of Guerrilla Warfare"* (New York: Walker, 1967), and Robert Thompson, *"Defeating Communist Insurgency: Experiences from Malaya and Vietnam"* (London: Chatto and Windus, 1966), some of the U.S army's counterinsurgency field manuals also refer to the same approach

in devising their strategies to respond to insurgencies, see, for example, Headquarters, Marine Corps Combat Development Command, *"U.S. Army/Marine Corps Counterinsurgency Field Manual 3-24"* (Washington, DC: Department of the Army, 2006), p: 51.

^{xxvii} Alexander B. Downes, *"Targeting Civilians in War"*, pp: 160-77.

^{xxviii} Michael Roberts associated the rise of the modern state with the so-called military revolution of the early modern age, in which the extensive use of firearms radically reorganized European armies. Medieval forces primarily comprised of mercenaries and men led by and only loyal to their feudal lords could not be reconciled with the requirements brought about by modern technologies that, above all, necessitated a much higher level of training and discipline, Michael Roberts, "The Military Revolution, 1560-1660", in Michael Roberts (ed.), *"Essays in Swedish History"*, p: 204.

^{xxix} Tilly's works in regard to the role transformations in military affairs played in the creation and consolidation of the modern European states include Charles Tilly, "War Making and State Making as Organized Crime" in Dietrich Rueschemeyer, Peter b. Evans and Theda Skocpol (eds.), *"Bringing the State Back In"*, pp: 203-21 and Charles Tilly, *"Coercion, Capital and European States: 990-1990"*, (Oxford: Blackwell, 1990). However, the notion of a military revolution in the 16th and 17th centuries or, more importantly, its alleged effects on the organization of modern armies have been severely criticized. Irregular fighters in the shape of mercenaries, tribal units or various forms of public-private partnerships, for example, have played important roles in conventional or non-conventional wars well into our contemporary times. These units operate without much discipline and usually beyond the limitations of the laws and customs of war to do the dirty business of looting and murdering. For arguments against the early modern age military revolution as the cause of the legal marginalization of irregular fighters, see: Geoffrey Parker, *"The Military Revolution: Military Innovation and the Rise of the West 1500-1800"*, (Cambridge: Cambridge University Press, 1988); David Parrott, "Had a Distinct Template for 'Western Way of War' been established before 1800?" in Hew Strachan and Sibylle Scheiper (eds.), *"The Changing Character of War"*, (Oxford: Oxford University Press, 2011), 48-63 and Sibylle Scheipers, *"Unlawful Combatant"*; and Dezfuli, S. K. (2023). Targeted killings and the erosion of international norm against assassination. *Defense & Security Analysis*, 39(2), 191-206. <https://doi.org/10.1080/14751798.2023.2185947>.

^{xxx} Richard S. Hartigan (ed.), *"Lieber's Code and the Laws of War"*, (Chicago: Precedent, 1983), p: 39.

^{xxxi} Throughout the ages, one of the perpetual complaints against all types of irregular fighters has been the accusation that they hide among innocent local populations, making the distinction between them and civilians extremely difficult. Even the international laws of war, including Hague IV Convention's Article 1 (2) and Geneva Third Convention's Article 4 (2), refer to lack of distinguishable uniform and insignia as one of the defining characteristics of irregular, see: James Turner Johnson, *"Can Modern War Be Just?"*, (New Haven: Yale University Press, 1986). The constant resort to accusations revolving around the refusal to wear distinguishable uniforms and the difficulties it causes to differentiate combatants from civilians among writers from Francis Lieber in the 19th to John Yoo in the 21st century is a testimony to the importance of this factor in arguments against the violent nature of irregulars' fighting methods and the dangers they bring for innocent civilians, see Richard S. Hartigan, *"Lieber's Code"*, p: 39 and John C. Yoo & James C. Ho, "The Status of Terrorists", *Boalt Working Papers in Public Law*, 25 (2003), p: 10.

^{xxxii} For the critics' arguments against the moral explanation of the irregular fighters' marginalization in the modern laws of war, see Scheiper, *"Unlawful Combatant"*, pp: 13-14.

^{xxxiii} Francis Lieber, *"Guerrilla Parties: Considered With Reference to the Laws and Usages of War"*, (Forgotten Books, 2019).

^{xxxiv} Hedley Bull & Adam Watson, *"The Expansion of International Society"*, (Oxford: Clarendon Press, 1984), 1.

^{xxxv} Edward J. Erickson (ed.), *"A Global History of Relocation in Counterinsurgency Warfare"*, (London: Bloomsbury Academic, 2020); and Anthony James Joes, *"Resisting Rebellion: The History and Politics of Counterinsurgency"*, (Lexington: Kentucky University Press, 2004).

^{xxxvi} Charles E. Callwell, *"Small Wars: Their Principle and Practice"*, (Omaha: University of Nebraska Press, 1996), p: 21.

^{xxxvii} For some of the works in this respect, see Max boot, *"invisible armies: An Epic History of Guerrilla Warfare"*, (New York: Norton and Company, 2013); John Arquilla, *"Insurgents, Raiders, and Bandits: How Masters of Irregular Warfare Have Shaped Our World"*, (Lanham, MD: Ivan R.

Dee, 2011); Robert B. Asprey, *War in the Shadows: The Guerrillas in History*, (Stanford: Hoover Institution Press, 1971); and Walter Laqueur, *Guerrilla Warfare: A Historical and Critical Study*, (New York: Transaction, 1998).

^{xxxviii} John Ellis, *From the Barrel of A Gun: A History of Guerrilla, Revolutionary, and Counter-insurgency Warfare, From the Romans to the Present*, (London: Greenhill Books, 1995)

^{xxxix} Omer Bartov, *Hitler's Army: Soldiers, Nazis, and War in the Third Reich*, (Oxford: Oxford University Press, 1992).

^{xi} Elspeth Van Veeren, "The Cultural Turn in International Relations: Making Sense of World Politics", *E-International Relations*, May 10, 2009 in https://www.e-ir.info/2009/05/10/the-'cultural-turn'-in-international-relations-making-sense-of-world-politics/#_ftnref1.

^{xli} Valerie M. Hudson, *Culture and Foreign Policy: Developing A Research Agenda*, (Boulder: L. Rienner Publishers, 1997), 3-4.

^{xlii} Qf. Alison Mountz, "The Other" in Carolyn Gallaher et al. (eds.), *Key Concepts in Political Geography*, (Sage Publications, 2009), 328-338.

^{xliii} John R. M. Taylor, *The Philippines Insurrection Against the United States: A Compilation of Documents with Notes and Instructions*, (Eugenio Lopez Foundation, 1971).

^{xliv} Louise K. Barnett, *Atrocity and American Military Justice in Southeast Asia: Trial by Army*, (New York: Routledge, 2010).

^{xlv} Human Rights Watch, *Leadership failure: firsthand accounts of torture of Iraqi detainees by the U.S. Army's 82nd Airborne Division*, (New York: Human Rights Watch, 2005).